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ARTICLE APPEARED
ON PAGE A-32NEW YORK TIMES
4 MAY 1979

Spying on Americans

"We've got to get off the back of the . . . C.I.A.," says George Bush, the newest Republican Presidential candidate — and former C.I.A. director. He is not alone. There are many who regard the effort to prevent the abuses and horror stories of recent years as just so much wallowing in Watergate, and harmful wallowing at that. They fear, especially since the upheaval in Iran, that the C.I.A. has been crippled. Stop being so fastidious, they say; we live in a dirty world. More than effective intelligence controls, the nation needs effective intelligence.

But what a primitive choice; why choose? A mature and sensible society should be able to have both. And that is why current rumblings from the Carter Administration are encouraging. For months, it has been struggling to draft an intelligence charter, at last spelling out in law what the C.I.A. and other agencies should and should not do. Some results are being sent to Capitol Hill for reaction. They present choices that are far more constructive than the one urged by Mr. Bush. And far more difficult.

Most of the issues, including proper control of covert action abroad, are likely to be manageable. The truly hard choices center on what is called "positive intelligence," information gathered from unwitting citizens. To take one form, is it permissible to spy on Americans abroad who have done nothing at all wrong but who know something that might be useful to the United States Government? One need only remember the perversions of Watergate to believe the answer should be no. Yet there may be rare cases justifying such spying. The charter drafters seem intent on permitting such cases, though only after a warrant is

issued. We will be interested in how well the Administration attests to both the need and the safeguard.

Still harder questions arise from a second kind of positive intelligence. Is it permissible to spy on domestic organizations, like corporations with overseas offices, in order to acquire foreign intelligence? The question should be clearly understood. It does not refer to organizations which volunteer information to the Government or cover jobs for agents. The issue is whether to extract information from American organizations without their knowledge or consent.

The answer may depend on how much one is offended by various techniques. Imagine that an American company trading legally in gold on the London market arouses governmental interest because of the possible effect on the dollar. Should agents in London be permitted to shadow the traders? Interview them under false pretenses? Open their mail? Bug their hotel rooms? Bribe them for information? Should agents be permitted to impersonate the traders? Or even to infiltrate the company, as ostensible employees? Can a line be drawn in this spectrum?

No one yet knows what answers the Administration will recommend; they are still being hotly debated. We hope, with equal fervor, that the answers are all no. There is more at issue than privacy; there is the danger that institutions and corporations of a free society end up serving as, or looking like, instruments of the state. Perhaps a case can be made for keeping the legal door open for rare instances. But as we now weigh the gains against the losses in public confidence in the integrity of American institutions, the choice on positive intelligence looks clearly negative.